

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
BERNSTEIN, et al.,

Plaintiffs,

-v-

CENGAGE LEARNING, INC.,

Defendant.

CIVIL ACTION NO.: 19 Civ. 7541 (ALC) (SLC)

ORDER

SARAH L. CAVE, United States Magistrate Judge.

A Telephone Status Conference was held today, November 30, 2020 regarding the parties' Joint Status Report and proposed discovery schedules. (See ECF Nos. 56, 58). The Court's order is set forth below.

A. Background

Plaintiffs' complaint was filed on August 12, 2019. (ECF No. 1). On November 21, 2019, the Honorable Andrew L. Carter, Jr., United States District Judge, referred this matter to the undersigned for general pretrial matters as well as to decide Plaintiffs' Motion to Appoint Counsel. (ECF No. 37). On December 20, 2019, Defendant Cengage Learning, Inc. ("Cengage") moved to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), or alternatively, to strike the class allegations in the complaint pursuant to Federal Rule of Civil Procedure 12(f). (ECF Nos. 39–41). On September 29, 2020, Judge Carter issued an Opinion and Order granting in part and denying in part Cengage's motion to dismiss and denying Cengage's motion to strike ("the Opinion and Order"). (ECF No. 52). In pertinent part, the Opinion and Order dismissed Plaintiffs' breach of contract claim and dismissed the claim for breach of implied

covenant of good faith and fair dealing as to Cengage's digital product Cengage Unlimited, but not as to MindTap. (Id. at 6). Finally, the Court directed the parties to file a joint status report "regarding how they would like to proceed with the remainder of this claim." (Id. at 12). On October 30, 2020, the parties filed a status report, and Defendant submitted a supplemental response on November 18, 2020. (ECF Nos. 56, 58). The Court conducted a conference with the parties on November 30, 2020.

B. Order

Having reviewed the parties' status report, considered their respective proposals for the pretrial schedule, and heard their arguments during the conference, the Court ORDERS as follows:

1. By **Friday, December 11, 2020**, Plaintiffs shall file their Motion for Leave to Amend the complaint, which shall be decided by the undersigned. Opposition and reply papers shall be due in accordance with Local Civil Rule 6.1.
2. The parties shall meet and confer concerning the scope of discovery to proceed while the Motion for Leave to Amend is pending, relating to the following categories: (i) Plaintiffs' claim for breach of implied covenant of good faith and fair dealing concerning MindTap, and (ii) the adequacy and typicality of the class representatives. By **Friday, December 18, 2020**, the parties shall submit a discovery proposal concerning the documents to be produced and the timeline for production. In the event that the parties disagree, they may each submit a letter of no longer than three pages in length setting forth their respective positions.

On review of the parties' December 18, 2020 submission(s), the Court will issue an interim scheduling order and determine whether to schedule another Telephone Status Conference.

Dated: New York, New York
November 30, 2020

SO ORDERED



SARAH L. CAVE
United States Magistrate Judge